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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC874

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of four Letters of Authorization.

SUMMARY: In accordance with regulations issued under the Marine Mammal Protection Act, as amended, we hereby give notification that we, the National Marine Fisheries Service (NMFS), have issued four 1-year Letters of Authorization (Authorizations) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to their military readiness activities associated with the routine training, testing, and military operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar within the northwest Pacific Ocean and the north-central Pacific Ocean.

DATES: These Authorizations are effective from August 15, 2013, through August 14, 2014.

ADDRESSES: Electronic copies of the Navy's May 28, 2012, LOA application letter and the LOAs are available by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service,

1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning the contact listed here (SEE FOR FURTHER INFORMATION CONTACT), or online at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens if certain findings are made and regulations are issued. Under the MMPA, the term “take” means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. We, the NMFS, have been delegated the authority to issue such regulations and Authorizations.

With respect to military readiness activities, the MMPA defines harassment as “(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

Authorization may be granted for periods of five years or less if we find that the total taking will have a negligible impact on the affected species or stock(s) and will not have

an unmitigable adverse impact on the availability of the species or stock(s) for taking for certain subsistence uses. In addition, we must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the Navy's routine training, testing, and military operations of SURTASS LFA sonar are in effect through August 15, 2017 (77 FR 50290, August 20, 2012) and are codified at 50 CFR part 218 subpart X. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 20, 2012, Federal Register Notice and 50 CFR part 218 subpart X. Under those regulations, we must publish a notice of issuance of an Authorization or Authorization renewal in the Federal Register within 30 days of a determination.

Summary of Request

On May 28, 2013, we received an application from the Navy requesting a renewal of four Authorizations, originally issued on August 15, 2012 (77 FR 51969, August 28, 2012), for the taking of marine mammals incidental to routine training, testing, and military operations of SURTASS LFA sonar in the northwest Pacific Ocean and the north-central Pacific Ocean under the regulations issued on August 15, 2012 (77 FR 50290, August 20, 2012): one for the United States Naval Ship (USNS) VICTORIOUS (T-AGOS 19), one for the USNS ABLE (T-AGOS 20), one for the USNS EFFECTIVE

(T-AGOS 21), and one for the USNS IMPECCABLE (T-AGOS 23) The application requested that these four Authorizations become effective on August 15, 2013, for a period not to exceed one year._

Summary of Activity Under the 2012 Authorizations

The Navy submitted quarterly mission reports for the periods of August, 2012 through May, 2013 within the required timeframes. These quarterly reports include the dates and times of the military readiness activities; location of each SURTASS LFA sonar vessel; mission operational area; marine mammal observations; and records of any delays or suspensions of sonar operations. The Navy must also report on the number of marine mammals detected by visual, passive and active acoustic monitoring and the estimated percentage of each marine mammal stock taken by Level A and Level B harassment. The reports indicate the following:

- The Navy conducted a total of 12 missions from August 15, 2012 through May 16, 2013 in the western North Pacific Ocean which totaled 25.4 days and resulted in 47.3 hours of LFA sonar transmissions.
- The cumulative total days of SURTASS LFA operations were 97 percent below the annual levels contemplated in the Final Rule (i.e., 240 days per vessel);
- The cumulative total hours of LFA sonar transmissions were 97 percent below the levels contemplated in the Final Rule (i.e., 432 hours per vessel);
- The total percentage of each marine mammal stock taken by Level B harassment has not exceeded the 12 percent cap. For each stock, the percentage of take was well below the levels authorized in the 2012 LOAs.

- The total percentage of each marine mammal stock taken by Level A harassment has not exceeded the levels authorized in the 2012 LOAs. In fact, the Navy reported no incidences of Level A harassment takes.

The operational tempo, number of active transmission hours, marine mammal detections and behavioral observations, and level of anticipated take of marine mammals fall within the scope and nature of those contemplated by the Final Rule and authorized in the 2012 Authorizations.

Monitoring Reports

The Navy has submitted the monitoring reports on time as required under 50 CFR 218.236 and the 2012 Authorizations. We have reviewed these reports and determined them to be acceptable. Based on these reports, the Navy has not exceeded the average annual estimated usage of the four SURTASS LFA sonar systems and remains well within the take authorized. In accordance with the current SURTASS LFA sonar regulations (50 CFR 218.230), the Navy must submit an annual report to us no later than 45 days after the 2012 Authorizations have expired. Upon receipt, we will post the annual report at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Level of Taking for 2013 Authorizations Period

For the 2013 to 2014 Authorization period, the Navy expects to conduct the same type and amount of routine training, testing, and military operations of SURTASS LFA sonar in the northwest Pacific Ocean and the north-central Pacific Ocean that they requested under the 2012 Authorizations. Similarly, the Navy expects to remain within the annual take estimates analyzed in the Final Rule. We determined that the level of taking by incidental harassment from the activities described in the Authorizations and

supporting application is consistent with the findings made for the total taking allowable under the 2012 Final Rule.

Compliance with Mitigation, Monitoring, and Reporting Measures

Based on our review of the Navy's quarterly mission reports, the Navy complied with the required visual, passive, and acoustic monitoring measures in the Final Rule and 2012 Authorizations. The Navy also followed the required shutdown and other protocols for mitigating impacts to marine mammals while conducting operations.

The Navy is also complying with required measures under 50 CFR 218.236(d) to gain and share information on the species. The Navy reports that they are continuing to work on information transfer, declassification and archiving of ambient noise data from the Navy's Integrated Undersea Surveillance System (IUSS) to the public.

The Final Rule and 2012 Authorizations required the Navy to convene a Scientific Advisory Group (SAG) to analyze different types of monitoring and research that could increase the understanding of the potential effects of LFA sonar on beaked whales and harbor porpoises (50 CFR 218.236(e)). In August 2013, the SAG produced a preliminary final report and presented preliminary recommendations to us and the Navy regarding the feasibility, efficacy, and significance of any proposed research projects that would increase the understanding of the potential effects of LFA sonar on beaked whales and harbor porpoises. The Navy will consider the Final Report's assessments and develop, with input from us, an appropriate plan of action for potential new monitoring or research efforts, which they will present to the SAG's Executive Oversight Group (which includes representatives from NMFS) for discussion and review.

Based on the foregoing information and the Navy's application, we determined that the mitigation, monitoring, and reporting measures required under 50 CFR 218.234, .235,

and .236 and NMFS' 2012 Authorizations were undertaken and will be undertaken during the period of validity of the renewed 2013 Authorizations.

Adaptive Management

The Final Rule and 2012 Authorizations include an adaptive management framework that allows us to consider new information and to determine (with input from the Navy regarding practicability) if modifications to mitigation and/or monitoring measures are appropriate and practicable. This framework includes a requirement for an annual meeting between us and the Navy, if either agency deems it necessary.

On June 10, 2013, we and the Navy convened an Adaptive Management meeting to review and discuss several topics, including: the Navy's mitigation monitoring results; the Navy's efforts in declassifying and transferring marine mammal monitoring data; consideration of possible additional Offshore Biologically Important Areas (OBIs) under the criteria specified in the Final Rule; and consideration of new information that could potentially inform decisions regarding modifying existing mitigation and/or monitoring measures. Representatives from the U.S. Marine Mammal Commission were also in attendance and participated in the meeting.

Consideration of Areas as Potential OBIs

We currently intend to evaluate new information relating to several areas for potential consideration as OBIs for mysticetes and/or sperm whales before the Navy submits their 2014 renewal request for Authorizations under the Final Rule. Note that all of these areas fall outside the areas in which the Navy may operate under the 2013 Authorizations. Our evaluation will include the following areas:

- Atlantic Ocean: Southeast Shoal-Grand Banks, Canada; Grand Manan Basin Right Whale Conservation Area, Canada; Jordan Basin-Gulf of Maine, U.S.; Challenger Bank, Bermuda; and nearshore waters offshore New Jersey, U.S.
- Gulf of Mexico: areas in the eastern Gulf of Mexico, U.S.; Mississippi and DeSoto Canyons, U.S.
- Indian Ocean: Masira Bay, Oman and the Geyser-Zelee Complex, Madagascar.
- North Sea: Dogger Bank, Germany.
- Mediterranean Sea: central Tyrrhenian Sea and areas in the northern Mediterranean Sea.
- Pacific Ocean: South Taranaki Bight, New Zealand; the Coral Sea Commonwealth Marine Reserve, Australia; and the proposed expanded areas of the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries, U.S.

Additionally, as a result of issues raised in the course of litigation challenging our 2012 Final Rule, we re-evaluated 15 previously analyzed areas that we had determined did not qualify for OBIA designation. None of these areas is located within the Navy's mission areas for the 2013 Authorizations. As a result of the re-evaluation and consideration of the best scientific evidence currently available, we reaffirmed our determination that 14 of the 15 areas are not eligible as an OBIA because they do not meet either the geographic or biological criteria for designation specified in the Final Rule. The remaining area, the Grand Manan Basin Right Whale Conservation Area in the northwest Atlantic Ocean, merits additional consideration based on subsequently-acquired information and appears in the above list. However, the Navy will not operate SURTASS LFA sonar in the northwest Atlantic Ocean within the timeframes of the 2013-2014 Authorizations. We will evaluate this area further as a potential OBIA with

input from the Navy regarding practicability, as necessary through the adaptive management process, for the Navy's 2014 Authorization requests.

None of the information considered or discussed before, during, or since the 2013 Adaptive Management Meeting, including consideration of issues raised in the ongoing litigation, led us to recommend any modifications to the existing mitigation or monitoring measures at this time, although we are still considering whether some other areas located outside of the Navy's current operational area in the Pacific Ocean qualify as OBIAs under the criteria specified in the Final Rule. Throughout the effective period of the Final Rule, we will consider and discuss with the Navy any relevant new information as it arises related to areas that may qualify as potential OBIAs or any other mitigation for SURTASS LFA sonar.

Authorization

We have issued four Letters of Authorization to the Navy, authorizing the incidental harassment of marine mammals, incidental to operating the four SURTASS LFA sonar systems for routine training, testing and use during military operations. Issuance of these four Authorizations is based on findings, described in the preamble to the final rule (77 FR 50290, August 20, 2012) and supported by information contained in the Navy's required reports on SURTASS LFA sonar and their application, that the activities described under these four Authorizations will have no more than a negligible impact on marine mammal species or stocks and will not have an unmitigable adverse impact on their availability for taking for subsistence uses.

These Authorizations remain valid through August 15, 2014, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the

mitigation, monitoring, and reporting requirements described in 50 CFR 218.230 through 218.241 (77 FR 50290, August 20, 2012) and in the LOAs are undertaken.

Dated: September 13, 2013.

Helen M. Golde, Deputy Director,
Office of Protected Resources,
National Marine Fisheries Service.

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